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JUL 02 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Via Fax 571-273-8300

In re Application of: O'Lenick

Examiner: Meller, Michael V.

Group Art Unit: 1655

Serial No: 10/620,899

Filed: 07/17/2003

Title: Cranberry alkoxy Esters as a Delivery System for Natural Antioxidants

Honorable Commissioner
Patents and Trademarks
P.O. Box 1450
Alexandria Va.

Sir:

Please enter the following amendment in response to the restriction requirement dated
6/27/2006.

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AMENDMENT UNDER 37 CFR 1.111

Applicant respectfully traverses the rejection and offers the following information, which should be entered since it will ultimately streamline the issues in the appeal.

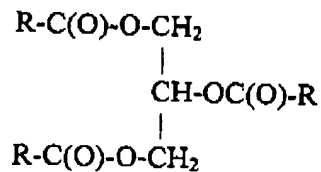
The key to the rejection and only issue at hand is the fact that the applicant is using functional language to describe a natural product made by a particular process rather than a simple "R" chemical definition. The present office action states " There is no chemical structure for "R" and since that is the case is it not clear what "R" is. It is defined as derived from cold pressed cranberry, but without a chemical structure of it, it is not adequately defined by the instant specification". Clearly, the issue that will arise in appeal is if the only acceptable method of naming the natural oil from which the compounds of the present invention are derived is with words like "'R" is alkyl having x to y carbon atoms". There is nothing of record to specify why the language used in non-enabling. Therefore, Applicant respectfully contends that a *Prima Facie Case* of non-enablement has not been established. There is nothing of record stating why the definition provided by the applicant is non-enabling. MPEP and case law clearly establish hat information needs to be based upon adequately articulated evidence well grounded scientific reason. Applicant respectfully contends that the rejection under 35 USC 112 is not proper as specified above.

Applicant respectfully contends that natural products like polymers are complex mixtures of species made up described by the inventor in great detail in the specification and confirmed in the Steinberg Declaration. Applicant points out that by describing the

"R" group as requested by the current office action with a certain alkyl chain length would not work since the product so described could be made by blending oils or fatty acids that are not the specified cold pressed oil and would not be functional. Such a description would not define the present invention in full, clear and concise and exact terms as to enable any person skilled in the art to which it pertains ... to carry out the invention. The natural oils that are described as "derived from cold pressed oil" tell the genus and species of the plant from which they are derived, the method of processing the oil, and the antioxidant materials present. It is the only way to describe the product the inventor claims as his invention.

Applicant respectfully traverses the rejection and contends that the application painstakingly describes cold pressed cranberry oil as:

[015] Cold Pressed Cranberry Oil is a triglyceride conforming to the following structure:



[016] The R-C(O)- group has the following composition:

<u>Component</u>	<u>% Weight</u>
16:0 palmitic	5.0 to 6.0
18:0 stearic	1.0 to 2.0
18:1 oleic	20 to 25
18:2 linoleic	35 to 40
18:3 linolenic (alpha)	30 to 35
20:0 arachidic	0.13

20:1 gadoleic	0.20
20:5 (n-3)	0.32
22:2	1.1
Myristic	0.01
Pentadecanoic	0.02
Palmitoleic (trans)	0.13
Palmitoleic (cis)	0.08
10-heptadecanoic	0.03
Gamma linolenic	0.1 to 0.2
Nonadecanoic	0.1 to 0.2
11-transeicosenic	0.22
11, 14 eicosandienoic	0.1
11, 14, 17 eicosatrienoic	0.01
Eicosapentaenoic	0.01
Behenic	0.03
Erucic	0.02
Docosapentaenoic	0.01
Tricosanoic	0.01
Lignoceric	0.02
Nervonic	0.02

[017] The oil also contains the following very critical "active" components for skin and hair care:

<u>Compound</u>	<u>mg/kg</u>
Campesterol/brassicasterol (mg/kg)	66.0
Stigmasterol (mg/kg)	68.0
Beta-sitosterol (mg/kg)	1319.0
Phosphatidylinositol (mg/kg)	9.9
Phosphatidylcholine (mg/kg)	202.0
Alpha-tocopherol (mg/kg)	341.0

Gamma-tocopherol (mg/kg) 110.0

[018] When the oil is exposed to steam strip and solvent extraction the concentration of the "active" components drops to vanishingly small levels and the activity is lost.
(emphasis added)

[019] As can be seen, the cold pressed cranberry seed oil is a rich source of compounds having important properties when applied to hair and skin. (emphasis added) Applicant respectfully contends that the language saying R is derived from cold pressed cranberry seed oil has proper antecedent basis and complies with 35 USC 112. The specific way the applicant has defined the oil not only complies with 35 USC 112 but to deny the claims would deny the applicant the present invention. The claims not only enable one of ordinary skill in the art to practice the current invention, the invention as claimed defined cold pressed oil in the most particular way possible.

Applicant points to MPEP:

¶ 7.34.01 Rejection, 35 U.S.C. 112, 2nd Paragraph, Failure To Particularly Point out and Distinctly Claim (Indefinite)

Claim [1] rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner Note:

1. This rejection must be preceded by form paragraph 7.30.02 or 7.103.2. This form paragraph should be followed by one or more of the following form paragraphs 7.34.02 - 7.34.11, as applicable. If none of these form paragraphs are appropriate, a full explanation of the deficiency of the claims should be supplied. Whenever possible, identify the particular term(s) or limitation(s) which render the claim(s) indefinite and state why such term or limitation renders the claim indefinite. If the scope of the claimed subject matter can be determined by one having ordinary skill in the art, a rejection using this form paragraph would not be appropriate. (Emphasis added)

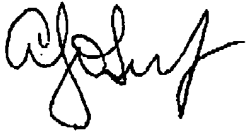
This requirement of the MPEP has not been addressed and is not of record. Clearly, the scope of the claimed subject matter can be determined by one having ordinary skill in the art, and consequently a rejection using this form paragraph would not be appropriate.

The definition of Cold Pressed oils as defined is clear the claimed subject matter can be determined by one having ordinary skill in the art, a rejection using this form paragraph would not be appropriate. The present rejection fails to identify the particular term(s) or limitation(s) which render the claim(s) indefinite and state why such term or limitation renders the claim indefinite. Appropriate correction is requested.

Despite the fact that only claims 1-7 are currently pending and claims 8-15 are withdrawn, applicant respectfully points out that claims 1-7 are directed toward a compound, and claims 8-15 are directed toward the use of the novel compound. Applicant respectfully requests that the policy established by USPTO relating to rejoining claims directed to a process for using compounds be rejoined once the compound claims have been allowed.

Applicant respectfully requests reconsideration of the claims as amended and anxiously awaits a early *Notice of Allowance* of the claims

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'A. O'Lenick, Jr.', with a stylized, cursive script.

Anthony J. O'Lenick, Jr.
Applicant
July 2, 2006
2170 Luke Edwards Road
Dacula, Ga. 30019

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE					
Via Fax 571-373-8300					
In re Application of: O'Lenick					
Examiner: Muller, Michael V.					
Group Art Unit: 1633					
Serial No.: 10/630,890					
Filed: 07/17/2003					
Title: Strawberry Berry Batters as a Delivery System for Natural Antioxidants					
Honorable Commissioner Patents and Trademarks P.O. Box 1450 Alexandria Va.					
Sir:					
Please enter the following amendment in response to the examination requirement dated 6/27/2006.					
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